



Memorandum

To: Honorable Mayor Maso and the Frisco City Council
Thru: George Purefoy, City Manager
From: Amy Gill, Assistant to the City Manager
CC: Henry Hill, Ron Patterson, Nell Lange
Date: 10/2/2008
Re: CAPP Long term contract

Action Requested:

Discussion regarding Cities Aggregation Power Project, Inc. (CAPP) long-term power contract.

Background Information:

The City is a member of the Cities Aggregation Power Project ("CAPP"), a non-profit political subdivision corporation aggregator. Created in 2001 in anticipation of the deregulation of the Texas retail electric market, CAPP pools members' electric power needs in order to negotiate lower, more stable prices through bulk purchasing. CAPP is run by a voluntary 10 member Board of Directors, comprised entirely of city employees and city officials.

CAPP and its sister political subdivision corporation aggregator, South Texas Aggregation Project, Inc. ("STAP"), have more than 150 political subdivision members that purchase in excess of one billion kWh annually. Together CAPP and STAP have member savings that have surpassed \$100 million since the Texas electric market deregulated in 2002.

CAPP has entered into a Power Purchase Agreement ("PPA") with Luminant Generation Company LLC, Big Brown Power Company, LLC and Oak Grove Management Company, LLC (collectively, "Luminant") for approximately 150 MW of baseload power from seven different units over a 24-year period. CAPP has entered into the contract on behalf of all CAPP members and STAP members that are willing to be allocated a portion of approximately 150 MW, corresponding to each participating member's energy consumption as a percentage of all participating members' consumption.

CAPP General Counsel will be present at the October 8th City Council meeting to discuss the long term contract and answer questions. Action will be scheduled on the October 21st agenda. The following documents have been forward to you electronically by Richard Abernathy and are included in your packet:

- Power Purchase Agreement
- Ordinance
- Disclosure Memo
- CAPP Board overview letter
- Member Agreement between CAPP and Frisco

The attached ordinance commits the City to purchasing electric power to satisfy a portion of its annual energy needs (approximately 60%) through the CAPP PPA for up to 24 years and to pay a capacity payment equal to its proportionate amount of the debt service obligation associated with CAPP's prepayment of PPA capacity costs. The ordinance approves the Energy Sales Contract

between CAPP and the City (the "Member Contract") and authorizes the City officers and employees as may be appropriate to take all actions necessary to carry out the terms of this ordinance and the Member Contract.

CAPP Long-Term Contract Background:

Although CAPP member savings are significant, the price volatility in the market makes it difficult for CAPP members to accurately budget for power expenditures from year to year. This is because power contract options made available to retail customers like CAPP, regardless of source, have been priced as if the energy was produced exclusively from natural gas-fired plants. The price of natural gas is extremely volatile. Energy experts, including the Chairman of the Public Utility Commission of Texas, agree that this trend will continue over the long term.

In 2005, the CAPP Board authorized its consultants to find alternatives to purchasing the entirety of CAPP power requirements in a market that links the price of all energy to natural gas prices. The CAPP long-term contract to be approved by this ordinance is a result of these efforts. Contracting for a 24-year commitment of lignite/coal-fired capacity at a fixed price (with slight escalation over the term of the contract) to serve a portion of members' power requirements will lower overall energy costs and provide political subdivisions with an ability to more accurately predict and stabilize the impact of energy prices on annual budgets.

The CAPP long-term contract allows for better, more fiscally responsible budgets resulting from the stable and predictable long term energy costs that will be available to CAPP members through the baseload contract. Taxpayers benefit because CAPP member cities do not have to cut services or pass higher energy costs on through higher taxes when electricity prices experience volatility and spiking because of fluctuating market prices.

Purpose of the Ordinance:

This ordinance approves the CAPP Member Contract that commits the City to purchasing electric power to satisfy approximately 60% of its recent energy needs through the CAPP PPA for up to 24 years and to pay a capacity payment equal to its proportionate amount of the debt service obligation associated with CAPP's prepayment of PPA capacity costs. The ordinance acknowledges review of the Member Contract and the Disclosure Statement and authorizes the City Manager, city officer or city employee as may be appropriate to sign or modify the Member Contract and to take all necessary actions to carry out the terms of the ordinance, the Member Contract, and Disclosure Statement. The Member Contract approved by this ordinance makes certain that capacity payments (debt service obligation) payable by the City will be public property finance contractual obligations pursuant to Texas Local Government Code Chapter 271, Subchapter A, secured by a pledge of such member's ad valorem taxes, which will be assigned to support debt issued by CAPP to pay the capacity costs of the PPA

Explanation of "Be It Ordained" Paragraphs:

1. This section approves the CAPP Member Contract and holds the approval of the CAPP member contract necessary and desirable to meet the City's proprietary functions and basic governmental functions.

2. This section acknowledges that certain capacity payments required by the Member Contract and payable by the City are public property finance contractual obligations pursuant to Texas Local Government Code Chapter 271, Subchapter A that are secured by a pledge of such member's ad valorem taxes. The section further acknowledges that the fixed capacity component constitutes a long-term general obligation tax debt of the City, secured by a pledge of the City's ad valorem taxes.

3. This section is an acknowledgement that the City has reviewed the Member Contract and Disclosure Statement dated September 10, 2008. It authorizes the City Manager or other city employee or officer as may be appropriate to sign and return the Member Contract and Disclosure Statement to CAPP by the deadline provided.

4. This section authorizes the City Manager or other city employee or officer as may be appropriate to approve modifications and corrections to the Member Contract. Modifications and corrections may be necessary once all CAPP members have taken final action regarding participation in the CAPP long-term contract to conform changes to the assigned cost in the PPA. This section is clear that capacity payment obligations in any year are not to be changed from the amounts reflected in the Member Contract.

5. This section authorizes the City Manager or other city employee or officer as may be appropriate to sign additional power agreements for the period of 2009 – 2011 that are arranged by CAPP to meet the City's power requirements exceeding baseload needs addressed by the Member Contract with CAPP. This section is clear that any additional power agreements are subject to the right of annual appropriation.

6. This section authorizes City officers and employees as may be appropriate to take all such actions and deliver all such instruments that are necessary or desirable to carry out the provisions of this ordinance, Member Contract, or Disclosure Statement.

7. This section authorizes City officers and employees as may be appropriate to make changes or corrections to this ordinance, Member Contract, or ancillary document as may be necessary to correct ambiguities or mistakes, to more fully document the approved transactions, to allow approved changes to the Member Contract, or to obtain approval from the Texas Attorney General's Office for the Member Contract and debt issuance by CAPP.

8. This section provides that signatures of any City officers or employees that appear on the Member Contract will be valid and sufficient even if the officer or employee ceases to be employed and or represent the City before delivery of the Member Contract.

9. This section is a savings clause, which provides that if any section(s) is later found to be unconstitutional or invalid, that finding shall not affect, impair or invalidate the remaining provisions of this ordinance. This section further directs that the remaining provisions of the ordinance are to be interpreted as if the offending section or clause never existed.

10. This section incorporates the statements set forth in the recitals of the ordinance and confirms that the statements are true and correct.

Board Review/Citizen Input:

None.

Alternatives:

Once scheduled as an action item, council may deny the ordinance.

Financial Considerations:

The attached ordinance commits the City to purchasing electric power to satisfy a portion of its annual energy needs (approximately 60%) through the CAPP PPA for up to 24 years and to pay a capacity payment equal to its proportionate amount of the debt service obligation associated with CAPP's prepayment of PPA capacity costs.

Legal Review:

This item is for discussion only.

Supporting Documents:

- Power Purchase Agreement
- Ordinance
- Disclosure Memo
- CAPP Board overview letter
- Member Agreement between CAPP and Frisco

Thank you for your consideration of this item, if I can be of any support, please contact me at 972-292-5103 or by email at agill@friscotexas.gov